

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARQUISE DEANGELO LOFTIS,

Plaintiff,

v.

ARISCO, *et al.*,

Defendants.

Case No. 1:22-cv-01266-JLT-BAM (PC)

ORDER VACATING FINDINGS AND
RECOMMENDATIONS TO DISMISS
ACTION, WITHOUT PREJUDICE, FOR
FAILURE TO OBEY COURT ORDERS AND
FAILURE TO PROSECUTE

(ECF No. 13)

Plaintiff Marquise DeAngelo Loftis (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

On January 18, 2023, the Court issued a screening order granting Plaintiff leave to file a first amended complaint or a notice of voluntary dismissal within thirty (30) days. (ECF No. 9.) Following an extension of time, the March 27, 2023 deadline for Plaintiff’s first amended complaint or notice of voluntary dismissal expired. (ECF No. 11.) Therefore, on April 10, 2023, the Court issued findings and recommendations to dismiss this action, with prejudice, for failure to state a claim, failure to obey court orders, and failure to prosecute. (ECF No. 13.)

On April 20, 2023, Plaintiff filed a first amended complaint. (ECF No. 14.) Although it does not include a proof of service indicating the date that it was provided to prison staff for mailing, the first amended complaint is signed and dated March 24, 2023, before the March 27, 2023 deadline. (*Id.* at 11.)

1 In light of the filing of Plaintiff's first amended complaint, and in an abundance of caution
2 due to the apparent delay in mail delivery, the Court finds it appropriate to vacate the pending
3 findings and recommendations. **However, Plaintiff is warned that in the future, he should**
4 **include a proof of service indicating the date that his filing was provided to prison staff for**
5 **mailing, and the Court will not always accept the date that a filing was signed as the date**
6 **that it was mailed.**

7 Accordingly, the findings and recommendations issued on April 10, 2023, (ECF No. 13),
8 are HEREBY VACATED. Plaintiff's first amended complaint, filed April 20, 2023, will be
9 screened in due course.

10 IT IS SO ORDERED.
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12 Dated: April 21, 2023

13 /s/ Barbara A. McAuliffe
14 UNITED STATES MAGISTRATE JUDGE
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